

(j) *Cross reference.* In the case of a taxable year of a life insurance company ending after December 31, 1963, for which an election under section 1562(a)(1) by a controlled group of corporations is effective, the additional tax imposed by section 1562 may apply. See section 1562 and the regulations thereunder.

[T.D. 6513, 25 FR 12658, Dec. 10, 1960, as amended by T.D. 6845, 30 FR 9740, Aug. 5, 1965; T.D. 6886, 31 FR 8685, June 23, 1966; T.D. 7337, 39 FR 44972, Dec. 30, 1974]

**§ 1.802-4 Life insurance company taxable income.**

(a) *Life insurance company taxable income defined.* Section 802(b) defines the term *life insurance company taxable income*, for purposes of part I, subchapter L, chapter 1 of the Code, as the sum of:

(1) The taxable investment income (as defined in section 804), or, if smaller, the gain from operations (as defined in section 809),

(2) If the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) The amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

If for any taxable year there is a loss from operations (as defined in section 809(b)(2)), the amount taken into account under paragraphs (1) and (2) of section 802(b) and subparagraphs (1) and (2) of this paragraph shall be zero. However, even in such a case, there may still be an amount includible in life insurance company taxable income (and hence an amount subject to tax) by reason of an amount includible under section 802(b)(3) and subparagraph (3) of this paragraph.

(b) *Illustration of principles.* The provisions of section 802(b) and this section may be illustrated by the following examples:

*Example 1.* For the taxable year 1959, Y, a life insurance company, has taxable investment income of \$250,000, and a gain from operations of \$175,000. Y made no subtractions from the policyholders surplus account during such taxable year. For the taxable year 1959, Y has life insurance company taxable income of \$175,000.

*Example 2.* The facts are the same as in example 1 except that for the taxable year 1959, Y has a gain from operations of \$400,000. For the taxable year 1959, Y has life insurance company taxable income of \$325,000, computed by adding taxable investment income (\$250,000) and 50 percent (\$75,000) of the amount (\$150,000) by which the gain from operations (\$400,000) exceeds the taxable investment income (\$250,000).

*Example 3.* For the taxable year 1959, W, a life insurance company, has taxable investment income of zero (0) and a gain from operations of \$90,000. W made no subtractions from the policyholders surplus account during such taxable year. For the taxable year 1959, W has life insurance company taxable income of \$45,000, computed by adding taxable investment income (0) and 50 percent (\$45,000) of the amount (\$90,000) by which the gain from operations (\$90,000) exceeds the taxable investment income (0).

*Example 4.* For the taxable year 1961, Z, a life insurance company, has taxable investment income of \$100,000, a policyholders surplus account of \$50,000 as of the beginning of such taxable year, a loss from operations (as defined in section 809(b)(2)) of \$25,000, and subtractions from the policyholders surplus account in the amount of \$20,000. For the taxable year 1961, Z has life insurance company taxable income of \$20,000, as only the amount (\$20,000) subtracted from the policyholders surplus account is taken into account.

[T.D. 6513, 25 FR 12658, Dec. 10, 1960]

**§ 1.802-5 Special rule for 1959 and 1960.**

(a) *Transitional rule.* Section 802(a)(3) provides a transitional rule for the determination of the tax liability of a life insurance company for the taxable years 1959 and 1960 by reason of the operation of section 802(b)(3). Except as limited by section 802(a)(3) and paragraph (b) of this section, any increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) is taken into account only to the extent of one-third and two-thirds for the taxable years 1959 and 1960, respectively. To the extent there is an increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) which is not taken into account for the taxable years 1959 and 1960 because of the transitional rule provided by section 802(a)(3) and this paragraph, such amounts shall be included in "other accounts" under section 815(a)(3). For